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In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

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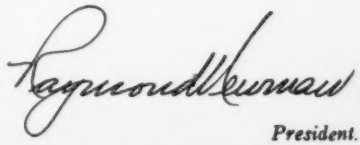

President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for January

Interesting Corporation Law Decisions of 1937--1939

Opinions have been rendered upon a number of unusual points of corporation law during the past two years. Among these, the following may be mentioned as of outstanding interest:

In Pennsylvania, a corporation was held to have the same power to issue stock providing for the payment of a certain rate of interest thereon, when earned, as it has to issue ordinary preferred stock.[1]

On the subject of the election of officers and directors, courts have reached the following conclusions:

A person may not be made an officer of a corporation without his knowledge and consent.[2] An agreement among stockholders and directors that a certain director should be annually elected president for three years is invalid, since such an undertaking barters away, in advance of election, the authority of a board of directors to elect a president.[3] An agreement between three stockholders of a closed corporation, owning shares in equal amounts, to perpetuate themselves as directors is not invalid.[4]

A charter provision to compel a shareholder to sell his stock to his corporation when ordered by the board to do so, was held to be an unreasonable provision by the Delaware Court of Chancery.[5]

A director's resolution creating a "permanent surplus fund," from which no dividend was to be paid, was held by a Federal court not to make void a subsequent declaration of a dividend which was to be paid from that fund, the court stating that "no action of a board of directors which the corporation has power to perform through its board of directors can be ultra vires of the corporation merely because the board previously has declared by resolution that such action will not be taken."[6]

That stockholders may not declare dividends, and may not regard themselves as in the position of loaning to their corporation amounts representing assets to which they would presumably be entitled if it were dissolved, was the finding of a Texas court.[7]

[1] *Warburton v. John Wanamaker Philadelphia et al.*, (Pennsylvania) 196 A. 506. (The Corporation Journal, April, 1938, page 154.)

[2] *West Leechburg Steel Co. v. Smitton*, (Michigan) 273 N. W. 439. (The Corporation Journal, October, 1937, page 7.)

[3] *Williams v. Fredericks et al.*, (Louisiana) 175 So. 642. (The Corporation Journal, November, 1937, page 32.)

[4] *Davis v. Arguls Gas & Oil Sales Co., Inc., et al.*, (New York) 3 N. Y. S. 2d 241. (The Corporation Journal, November, 1938, page 250.)

[5] *Greene v. E. H. Rollins & Sons, Incorporated*, (Delaware) 2 A. 2d 249. (The Corporation Journal, December, 1938, page 270.)

[6] *National Lock Co. v. Hogland et al.*, (Delaware) 101 F. 2d 576. (The Corporation Journal, June, 1939, page 414.)

[7] *Adams et al. v. Farmers Gin Co.*, (Texas) 114 S. W. 2d 583. (The Corporation Journal, December, 1938, page 272.)

Domestic Corporations

California.

Highest court rules that plan of reorganization under Sec. 77B was not "fair and equitable," where, with corporation insolvent in bankruptcy and equitable sense, full value of property available was not first applied to claims of bondholders before stockholders were allowed to participate. In a decision involving a question of the conditions under which stockholders may participate in a plan of reorganization under Sec. 77B of the Federal Bankruptcy Act, where the debtor corporation was insolvent both in the equity and in the bankruptcy sense, the Supreme Court of the United States, after an examination of the plan, held that it was not fair and equitable, as a matter of law, even though it had been assented to by 92.81% of the face amount of the bonds, 99.75% of the Class A stock and 90% of the Class B stock. The court emphasized that one of the statutory conditions is that the plan be fair and equitable or it may not be approved. It indicated that such an overwhelming approval of the plan "is as immaterial on the basic issue of its fairness as is the fact that petitioners own only $18,500 face amount of a large bond issue." It said: "The words 'fair and equitable' as used in Sec. 77B, sub. f are words of art which prior to the advent of Sec. 77B had acquired a fixed meaning through judicial interpretations in the field of equity receivership reorganizations," and concluded that the doctrine that a plan of reorganization fulfill the necessary standards of fairness is firmly imbedded in Sec. 77B. The court found the plan objectionable because it failed to accord creditors priority to the extent of their debts over stockholders against all the property of the corporation. Here there were not sufficient assets to pay the bondholders the amount of their claims. Under such circumstances, the court indicated that the full value of the property is first to be applied to the claims of the bondholders before the stockholders are allowed to participate. The court also indicated that to accord the creditor his full right of priority against the corporate assets where the debtor is insolvent, the stockholder's participation must be based on a contribution in money or in money's worth, reasonably equivalent in view of all the circumstances to the participation of the stockholder. *Case et al. v. Los Angeles Lumber Products Company, Limited,** 60 S. Ct. 1. Robert M. Clarke of Los Angeles, for petitioners. Robert H. Jackson, Sol. Gen., for the United States as amicus curiae, by special leave of court. J. Clifford Macfarland, David R. Faries and Woodward M. Taylor of Los Angeles, for respondent. *Petition for rehearing denied, December 4, 1939.*

* The full text of this opinion is printed in the CCH **U. S. Supreme Court Service**, 1939-1940, page 8021.

Upon consolidation, properly effected under statutes, dissenting stockholder is limited to accepting exchange offered or to surrendering stock to corporation after negotiation as to compensation as provided by statute. The United States Circuit of Appeals, Ninth

Circuit, in an action by a dissenting stockholder seeking to nullify the consolidation of the defendant corporations, ruled that, where the pertinent provisions of the Civil Code providing for consolidation (secs. 361, 361a and 369) had been complied with, a dissenting stockholder in one of the constituent companies was obliged to abide by the terms of the exchange offered to stockholders generally or to negotiate with the corporation, in accordance with sec. 369 for compensation for the surrender of the shares held. A decree dismissing the stockholder's bill was affirmed. *Beechwood Securities Corporation, Inc. v. Associated Oil Co. et al.*, 104 F. 2d 537. Commerce Clearing House Court Decisions Requisition No. 217904. Harry W. Dudley and E. Walter Guthrie of Los Angeles and Percival E. Jackson of New York City, for appellant. Robert M. Searls, Clifford J. MacMillan and John Parks Davis of San Francisco, for appellee. Henry W. Ballentine of Berkeley and Graham Lee Sterling, Jr., of Los Angeles, amici curiae.

Delaware.

Stockholder, dissenting to recapitalization plan, failing to exchange stock, upon which accrued dividends remained unpaid, for new common stock under plan, but accepting numerous dividends on new stock, denied recovery in suit instituted almost three years after adoption of amendment. Complainant stockholder sought to have declared void as to him an amendment to defendant corporation's charter which had effected changes in the capital structure. As to complainant, an equitable owner of 405 shares of Class A stock, which was a second cumulative preferred stock having no par value, upon which accrued dividends remained unpaid, the plan of recapitalization effected by the amendment called for the exchange of the Class A stock for 2025 shares of common stock without par value. Complainant's stock was voted against the amendment. The corporation treated the shares as having been converted and complainant received dividends on the new common shares, checks for which were cashed with his knowledge and consent. Suit was not instituted until almost three years after the adoption of the amendment. The case had been heard on a demurrer to the bill of complaint on the ground that the complainant's alleged rights had been lost by acquiescence or laches. The Chancellor sustained the demurrer, ruling that there was no right of action against the defendant company. The court stressed the inconsistency between complainant's claim that he still stood in the position of a Class A stockholder and his acceptance of numerous dividend checks on the new common stock. It felt that it was unnecessary to determine whether, in strictness, the decision should be based on laches or acquiescence, as sufficient facts, injuriously affecting defendant company and barring the complainant's right of recovery appeared. *Frank et al. v. Wilson & Co., Inc.*, Court of Chancery, New Castle County, November 8, 1939. CCH Court Decisions Requisition No. 225423; 9 A. 2d 82. William S. Prickett of Wilmington, for complainants. Hugh M. Morris, Edwin D. Steel, Jr., and S. Samuel Arsht of Wilmington, for defendant.

Idaho.

Shares issued to stockholder as "non-assessable," may not later be made assessable over stockholder's dissent. An Idaho corporation issued shares of its stock to one of the respondents with the words "Fully paid up and non-assessable" printed on the face of the certificates. Subsequently, the stockholders of the corporation by more than a two-thirds vote, the respondent dissenting, voted to make the stock assessable. This suit was brought to restrain the corporation in enforcing two assessments levied upon the stock, which respondent had refused to pay. The Supreme Court of Idaho affirmed a judgment for the stockholder, saying: "Assuming but not conceding the legislature, under Art. 11, Sec. 2 of the Constitution, has reserved power to, and that it did and could, authorize corporations to change non-assessable to assessable stock, without impairing the obligation of a contract that the stock should be non-assessable (as contended by appellants), that could not possibly vest a corporation with authority to commit fraud by inducing investors to purchase its stock upon the false representation that its shares were not assessable." *A. C. Frost & Co. et al. v. Coeur d'Alene Mines Corporation et al.*, 92 P. 2d 1057. James A. Wayne of Wallace, for appellants. C. H. Potts of Coeur d'Alene and H. J. Hull of Wallace, for respondents.

Louisiana.

Officers held empowered to purchase corporation's property where transaction is in good faith and consideration is adequate. In an action in which the validity of the sale of corporate property, which was a part of a corporation's stock in trade, to one of its officers, was questioned, the Court of Appeal of Louisiana, Second Circuit, said: "A corporation is an entity separate and distinct from its officers, directors and stockholders, and the officers may purchase the corporation's property, provided the transaction is in good faith and the consideration paid is adequate." *General Motors Acceptance Corporation v. Hahn*, 190 So. 869. Polk & Robinson of Alexandria, for appellant. A. A. Moss and Harry Fuller of Winnfield, for appellee.

New Jersey.

In attempted incorporation, where the certificate was recorded with county clerk, but not, as further provided by statute, filed with secretary of state, and there was practically no attempt to exercise corporate powers, Chancery Court rules no corporation came into existence. In an action in which a receiver was sought for an alleged insolvent corporation, it appeared that, although a certificate of incorporation had been recorded in the county clerk's office, there had been no compliance with the further statutory provision that the certificate be filed with the secretary of state and that no statutory fees had been tendered to that official. The Court of Chancery, in dismissing the bill on the ground that no such corporation as that

mentioned in the bill existed, either as a de jure or as a de facto corporation, observed that it was established, by decision, "that the failure, through ignorance or carelessness, to file the certificate of incorporation with the secretary of state does not prevent the existence of a de facto corporation; but there must be an effort in good faith to comply with the law. If the associates deliberately refrain from taking the steps prescribed by the statute, or if they are guilty of a fraud on the statute, they do not become a corporation de facto. Wonderly v. Booth, 36 N. J. L. 250. When they do not constitute a corporation de jure or de facto, persons doing business in an assumed corporate capacity, are partners and liable as partners. Hill v. Beach, 12 N. J. Eq. 31; Federal Advertising Corp. v. Hundertmark, 109 N. J. L. 12, 160 A. 40. In the present case, no explanation is offered for the failure to file the certificate of incorporation. The promoters of the corporation had the advice of counsel and I think it a fair inference that they were informed by him of the amount of the fee of the secretary of state and perhaps also of ensuing franchise taxes, and that they decided to avoid these burdens by omitting to file the certificate at Trenton—a practice which has become too common. If this is the correct inference, then no corporation came into existence." Other factors confirming the court in its conclusion were: the fact that no payment of capital stock had been made, there had been no meetings of stockholders or directors held and no officers had been elected. The only exercise of corporate powers had been the opening of a bank account. *Culkin v. Hillside Restaurant, Inc.*, 8 A. 2d 173. Alexander M. Goldfinger of Newark for complainant. Nathan S. Goldman of Newark, for Jack Pidgeon.

Vice Chancellor rules that where consideration for issuance of no par shares is fixed by the directors and that consideration is received by the corporation, stockholders to whom stock was issued are not assessable. Defendant corporation's directors, under statutory authority, fixed the value of the corporation's 300 shares of no par stock, issued in 100 share lots to the company's three stockholders, "at a price of $20. per share, representing a total of $6,000." By statute, shares without par value, issued in accordance with the statute, were to be deemed to be fully paid and non-assessable and the holders were not to be liable to the corporation or its creditors. This action was brought by the receiver for the company, seeking to have the three stockholders assessed a sum sufficient to pay creditors and administration expenses, on the theory that their stock was not fully paid for. The question was whether the corporation had received the full consideration fixed by the directors. Actual cash had not been paid. The directors at their organization meeting accepted an offer of two of the stockholders to sell the corporation a business conducted by them, in consideration of the assumption of debts, especially a corporate note payable to the third stockholder for $950, and for the further consideration of the issuance of the 300 shares mentioned. The Vice Chancellor reached the conclusion that the only consideration which was offered, and which the directors agreed to accept, was the transfer of the business previously conducted by

two of the stockholders, and ruled that the directors, by accepting the offer, fixed the consideration for the stock within the meaning of the statute, and, the duly fixed consideration being fully satisfied, the stockholders were not assessable. *G. Loewus & Co., Inc. v. Highland Queen Packing Co.*, 6 A. 2d 545. Sidney G. Goldberg of Newark, receiver. Isadore H. Colton of Newark, for respondents.

New York.

Stockholder, unsuccessful in derivative action, held liable for costs, which could not be shifted to corporation. The plaintiff stockholder, without the consent of his corporation, sued on behalf of himself and all other stockholders, none of whom joined him, to recover corporate funds allegedly wasted by defendant directors. Being unsuccessful, plaintiff moved to be relieved of the payment of costs and for an order directing the corporation to pay them. The Supreme Court of the State of New York denied the motion, remarking that plaintiff assumed all the risks which go with failure and ruled that he was answerable for the costs imposed against him. *Holland v. Presley*, 14 N. Y. S. 2d 83. Lotterman & Tepper of New York City, for plaintiff. Cullen & Dykman of Brooklyn, for defendants Diefendorf and others. Hodges, Reavis, Pantaleoni & Downey of New York City, for defendant National Investors Corporation. Milbank, Tweed & Hope of New York City, for defendant Presley.

Ohio.

Dismissal of garnishee ordered, upon his motion, where shares of corporate stock sought to be reached were represented by certificate, assigned for transfer, held by him in safe deposit box in another state. Where a garnishee is within the state, but the chose sought to be brought within the jurisdiction of the court by garnishee process consists of shares of stock in a corporation, represented by a certificate located in a safe deposit box in another state, was an order by the lower court sustaining a motion of the garnishee, to be dismissed as such, proper? The Court of Appeals of Ohio, Hamilton County, rules that the order was a proper one, citing Section 8673-13, General Code, providing in part as follows: "No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined." As the evidence revealed that the certificate was in possession of the garnishee for the purpose of transfer, the court said: "The evidence shows clearly that this stock had been assigned prior to the garnishment, and to require the garnishee to deliver the certificate would expose him to a liability to the assignee, who is not a party to the action, and therefore, would not be bound by any order made by the court." *Hamilton v. Temple*, 19 N. E. 2d 650. William R. Collins and Raymond Huwe of Cincinnati, for appellant. Howard D. Porter, amicus curiae.

Pennsylvania.

Subscriber to stock in an existing corporation, failing to pay entire amount due under subscription, did not acquire status of a stockholder so as to be entitled to dividends. Plaintiff, the assignee of a corporation which had subscribed for stock of the defendant company but which had failed to pay the entire amount due, sued to recover dividends paid by the company subsequent to the subscription, together with interest, the subscribing company having never received any dividends. A judgment for the defendant was affirmed by the Supreme Court of Pennsylvania on the ground that the subscriptions of plaintiff's assignor were "simply contracts of purchase and sale and the failure of the subscriber to fully execute its part of the contracts prevented it from acquiring the status of a shareholder." The court distinguished between subscriptions for shares in an existing corporation, as those before it were, and original subscriptions for stock in a corporation to be formed. *Schwartz v. Manufacturers' Casualty Insurance Company*, 6 A. 2d 299. Michael Edelman of Philadelphia, for appellant. John B. Martin and Duane, Morris & Hickscher of Philadelphia, for appellee.

Foreign Corporations

New York.

The Supreme Court of the United States has held, in a suit based upon diversity of citizenship, that a foreign corporation's appointment of an agent for the service of process in conformity with the laws of New York, effected an actual consent to be sued in the federal as well as the state courts of New York. An action was instituted in the District Court of the United States for the Southern District of New York by citizens and residents of New Jersey against a New York corporation, of which they were stockholders, to restrain the carrying out of a contract for the sale of property of the New York corporation to a Delaware company, later joined as a defendant. The Delaware company had its chief business and executive offices within the Southern District of New York and had designated an agent to accept process when complying with the conditions under which a foreign corporation is legally permitted to do business in New York. Upon being served, the Delaware corporation appeared specially and moved to quash the service and the marshal's return. An appeal was taken from an order granting the motion and dismissing the action as to the Delaware company. The United States Circuit Court affirmed the order of dismissal, 103 F. 2d 765. (The Corporation Journal, October, 1939, page 10.) This judgment has been reversed, upon appeal, by the Supreme Court of the United States. That court noted that the suit was based on diversity of citizenship and was not brought "in the district of the residence of either the plaintiff or the defendant." The words quoted were from Sec. 51, Judicial Code, 28 U. S. C. A. Sec. 112, providing, in part, that "where the jurisdiction is founded only on the fact that the

action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant." The highest court observed: "The sole question in the case is whether Sec. 51 is satisfied by the designation by a foreign corporation of an agent for service of process, in conformity with the law of a state in which suit is brought against it in one of the federal courts for that state." Justice Frankfurter, writing the majority opinion, reviewed the history of Sec. 51 and its application by the Federal courts. The immunity from suit referred to in Sec. 51, in districts other than that of the residence of either the plaintiff or defendant, was regarded as a privilege which might be lost by failure to assert it, by formal submission or by submission through conduct. In this instance, the court concluded that the Delaware corporation, by its appointment of an agent for the service of process under the laws of the State of New York, had effected an actual consent to be sued in the courts of New York, federal as well as state. Justice Roberts wrote a dissenting opinion, in which the Chief Justice and Justice McReynolds joined. *Neirbo Company et al. v. Bethlehem Shipbuilding Corporation, Ltd.,* The Supreme Court of the United States,* November 22, 1939; Docket No. 38; 60 S. Ct. 153. Commerce Clearing House Court Decisions Requisition No. 225754. Robert P. Weil and Laurence Arnold Tanzer of New York City, for the petitioners. William D. Whitney of Cravath, deGersdorff, Swaine & Wood of New York City, for the respondent.

* The full text of this opinion is printed in the CCH **U. S. Supreme Court Service, 1939-1940,** page 8111, and in **The Corporation Tax Service,** New York, page 273.

Taxation

Kentucky.

The Supreme Court of the United States denies certiorari in Kentucky decision upholding cigarette stamp tax regulation requiring the reporting of names and addresses of customers in interstate transactions. A regulation of the Kentucky Department of Revenue required all wholesalers and retailers who purchased or possessed unstamped cigarettes for delivery outside of Kentucky, upon which the cigarette tax exemption was claimed, to make monthly reports in addition to those required by law, containing, among other information, the names and addresses of foreign consignees. Appellant corporation, a Kentucky wholesaler, instituted this suit to enjoin the Department from prosecuting it for failure to furnish the required reports and to enjoin the Department from furnishing to the taxing officials of foreign states the names and addresses of its foreign cigarette customers shown on reports previously made. The Kentucky Court of Appeals ruled against the appellant, finding that there was no improper exercise of legislative power in requiring the information demanded or in permitting the exchange of similar lists with other states. As to appellant's argument that the regulation was but an indirect method of unlawful seizure and search of its

records, the court observed: "Appellant is only required to produce evidence to support its claim for tax exemption, and certainly this cannot in any manner be said to be an unlawful search or seizure of appellant's private records. If appellant does not want to produce the names of its customers and their addresses, it may refuse to do so by failing to claim the tax exemptions allowed it on cigarettes exported. But it is a reasonable regulation to require it to submit to the Department of Revenue of Kentucky the names and addresses of persons to whom it claims to have sold cigarettes in the State of Ohio when it asserts exemption from the cigarette tax on such sales." *Dixie Wholesale Grocery, Inc. v. Martin et al.,** 129 S. W. 2d 181. Frank Lee Dils of Covington, for appellant. Hubert Meredith, Attorney General, and Jesse K. Lewis, Asst. Attorney General, of Frankfort, for appellee. *(Certiorari was denied by the Supreme Court of the United States, November 13, 1939; Docket No. 409; 60 S. Ct. 173.)*

* The full text of this opinion is printed in **The Corporation Tax Service, Kentucky, page 5809.**

Texas.

Texas company, whose right to do business had been forfeited for failure to pay the franchise tax, held nevertheless subject to the payment of annual franchise taxes during the years between the forfeiture and the company's dissolution. Appellant Texas company's right to do business was forfeited in 1930 for failure to pay its annual franchise tax in that year. The company, however, continued to conduct its business until 1938, when it was dissolved. During this period it complied with all requirements except those for reinstatement and those for the payment of annual franchise taxes. This action was brought by the State against the company and its former directors to recover annual franchise taxes alleged by the State to have accrued during the years 1930 to 1938, inclusive. The Court of Civil Appeals of Texas, San Antonio, remarked: "The resulting question is: Was the corporation liable to the State, in the interval, for franchise tax levied by law upon corporations of its class? The question must be decided upon a construction of appropriate statutes, and not having been previously adjudicated in like or analogous reported cases in this State, it is one of first impression here." After an examination of the pertinent statutes, the court said: "We have reached the firm conclusion that when the statutes are construed together, as they should and must be, they express a clear intention upon the part of the Legislature to exact payment of the annual franchise tax of domestic corporations, such as appellant, so long as their charter and charter powers are in operating or operative effect, unaffected by the forfeiture in the meantime of its legal right to engage in business because of its default in the payment of the prescribed tax. The requirements that such a corporation report its condition 'each year,' and pay the tax computed thereon 'each year,' is not susceptible of the construction, urged by appellant, that the

withdrawal of the *legal* right to engage in business as one of penalties of default, has the effect of relieving the corporation of liability for the tax. The corporation may not avoid its liability by this simple process of evasion." *Ross Amigos Oil Co. et al. v. State,** 131 S. W. 2d 316.

*The full text of this opinion is printed in **The Corporation Tax Service, Texas volume, page 1559.**

The Supreme Court of the United States affirms judgment upholding statutory method of allocation of Texas franchise tax, according to gross receipts within and without state, against contention that actual capital located or used in state should be taken as basis of tax. The Texas franchise tax is graduated according to the amount of capital stock, surplus and undivided profits, plus outstanding notes and bonds running for more than a year; or when business is done also in other states, on that proportion of the capital, etc., which the gross receipts from business done in Texas the previous year bears to the gross receipts from the entire business of the corporation. Appellant, a foreign corporation doing business in Texas and in other states, was required to pay a tax, calculated according to its gross receipts, upon a proportion of capital, etc. of $23,157,705. It contended, however, that $3,079,417, representing its total capital actually located in or used in connection with business done in Texas, was the proper basis, and sued to recover the difference in the tax as calculated on these two bases. The Circuit Court of Appeals, Fifth Circuit, affirmed a judgment dismissing the suit. (*Ford Motor Co. v. Clark, Secretary of State, et al.*, 100 F. 2d 515; The Corporation Journal, April, 1939, page 376.) Upon appeal, the Supreme Court of the United States also affirmed, saying: "The exploitation by foreign corporations of intrastate opportunities under the protection and encouragement of local government offers a basis for taxation as unrestricted as that for domestic corporations. In laying a local privilege tax, the state sovereignty may place a charge upon that privilege for the protection afforded. When that charge, as here, is based upon the proportion of the capital employed in Texas, calculated by the percentage of sales which are within the state, no provision of the Federal Constitution is violated." "The Constitution recognizes the dual interests of the national and state governments and permits taxes for local privileges upon the intrastate activities of the farflung enterprises which gain large benefits from the nationwide market, protected by the commerce clause. We reject petitioner's contention that constitutionality of state taxation turns on so narrow an issue as whether local assets rather than local gross receipts are used in a taxing formula." *Ford Motor Company v. Beauchamp, Secretary of State of the State of Texas, et al.,** The Supreme Court of the United States, December 11, 1939; Docket No. 17. Commerce Clearing House Court Decisions Requisition No. 226926. Gaius G. Gannon of Houston, for petitioner.

*The full text of this opinion is printed in **The Corporation Tax Service, Texas, page 1567; and also in the CCH U. S. Supreme Court Service, 1939-1940, page 8247.**

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA. Docket No. 388. *Graybar Electric Co., Inc. v. Curry et al.*, 189 So. 186. (The Corporation Journal, November, 1939, page 64.) Alabama sales tax—interstate business. **Appeal filed, September 15, 1939. Affirmed, November 6, 1939, (The Corporation Journal, December, 1939, page 64). Petition for rehearing denied, December 4, 1939.**

CALIFORNIA. Docket Nos. 23-24. *Case et al. v. Los Angeles Lumber Products Company*, 60 S. Ct. 1. (The Corporation Journal, January, 1940, page 78.) Bankruptcy—reorganization of debtor—rights of dissenting bondholders. **Appeal filed, March 28, 1939. Certiorari granted, May 22, 1939. Argued October 18, 1939. Reversed, November 6, 1939.** (See page 78.) **Petition for rehearing denied, December 4, 1939.**

KENTUCKY. Docket No. 409. *Dixie Wholesale Grocery, Inc. v. Martin et al.*, 129 S. W. 2d 181. (The Corporation Journal, January, 1940, page 86.) Constitutionality of Kentucky Cigarette Stamp Tax Act. **Appeal filed, September 23, 1939. Certiorari, denied, November 13, 1939.** (See page 86.)

MISSISSIPPI. Docket No. 77. *Interstate Natural Gas Co. v. Stone*, 103 F. 2d 544. (The Corporation Journal, October, 1939, page 16.) Franchise tax on foreign pipe line company engaged in interstate commerce. **Appeal filed, May 29, 1939. Certiorari granted, June 5, 1939. December 4, 1939: Leave granted Mr. Maxwell Bramlette to appear and present oral argument for the petitioners, pro hac vice. Argument commenced for the petitioners. The Court declined to hear further argument. December 11, 1939:** *Per Curiam.* The judgment is affirmed. *Southern Gas Corporation v. Alabama*, 301 U. S. 148, 153, 156-157.

NEW YORK. Docket No. 38. *Neirbo Company et al. v. Bethlehem Shipbuilding Corporation, Ltd.*, 103 F. 2d 765. (The Corporation Journal, October, 1939, page 10.) Jurisdiction over foreign corporation qualified to do business in the state. **Appeal filed, April 27, 1939. Certiorari granted, May 29, 1939. Argued, October 17 and 18, 1939. Judgment reversed with costs and cause remanded to Southern District of New York Court for further proceedings in conformity with opinion, November 22, 1939. Opinion by Justice Frankfurter. Dissenting opinion by Justice Roberts in which the Chief Justice and Justice McReynolds join.** (See page 83.)

NEW YORK. Docket No. 45. *McGoldrick, Comptroller of the City of New York v. Felt & Tarrant Mfg. Co.*, 4 N. Y. S. 2d 615; (The Corporation Journal, December, 1938, page 282), affirmed without opinion, New York Court of Appeals, 279 N. Y. 678, 18 N. E. 2d 311. Constitutionality of New York City sales tax as applied to shipments which may be in interstate commerce. **Appeal filed, May 8, 1939. Certiorari granted, June 5, 1939. On day call for January 2, 1940.**

TEXAS. Docket No. 17. *Ford Motor Company v. Edward Clark, Secretary of the State of Texas et al.*, 100 F. 2d 515. (The Corporation Journal, April, 1939, page 376.) State annual franchise tax on corporations—basis of tax. **Petition for certiorari filed, March 15, 1939. Petition granted, April 3, 1939. Motion to substitute Tom L. Beauchamp, present Secretary of State, and Gerald Mann, present Attorney General, as parties respondent in place of Edward Clark and William McCraw, respectively, granted, May 1, 1939. Argued, October 16 and 17, 1939. Affirmed, December 11, 1939.** (See page 88.)

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* Data compiled from CCH **U. S. Supreme Court Service, 1939-1940.**

Regulations and Rulings

CALIFORNIA—The Franchise Tax Commissioner has issued a regulation outlining the application of the Bank and Corporation Franchise Tax Act and the Corporation Income Tax Act to foreign corporations selling merchandise to customers in California. In it different activities of foreign corporations are outlined and an indication is given as to the application of either act to these activities. (Reprinted in full text in the California Corporation Tax (CT) Service, ¶ 5-104a.)

DISTRICT OF COLUMBIA—The Corporation Counsel has ruled that the District of Columbia Income Tax Act requires all corporations subject to the jurisdiction of the District, including those incorporated in the District, engaged in any business in the District, or deriving gross income from District of Columbia sources, to file returns and pay the $25 filing fee. (District of Columbia CT (Corporation Tax) Service, ¶ 19-003.)

FLORIDA—The Secretary of State has stated that his office has not established a set rule for allocating the capital of a foreign corporation for the purpose of fixing the filing fee or tax payable in connection with the Corporation Report due July 1 of each year. In some instances, it is necessary for a corporation to measure its assets in Florida in proportion to its assets everywhere. The other method of allocation consists of measuring the business done in Florida to the business done everywhere. The type of business done and the facts and circumstances of each case determine which method of allocation is to be used. (Florida CT, ¶ 1446.)

INDIANA—The Attorney General of Indiana has rendered an opinion to the Secretary of State to the effect that whenever a foreign corporation employs an increased number of shares within the state, it must pay an additional admission fee, regardless of whether that result is obtained by an increase in the relative amount of assets and business done within the state or by an increase in the total number of shares. (Indiana CT, ¶ .401.)

NEW YORK—The State Tax Commission has under consideration the preparation of regulations in connection with Articles 9 and 9A of the Tax Law. (N. Y. CT, Report No. 118.)

TENNESSEE—The Attorney General of Tennessee has advised the Commissioner of Finance and Taxation that corporations are not subject to the stocks and bonds tax imposed by the Hall Income Tax Law. This ruling supports the Department of Finance and Taxation in a position, taken since the enactment of this law in 1931, that the act applied primarily to individuals and that ordinary business corporations were not generally required to pay the tax. (Tennessee CT, ¶¶ 15-102.01, 19-509.)

TEXAS—The Secretary of State has been advised by the Attorney General of Texas that a foreign corporation which has a permit to do business in Texas for a purpose permitted under the laws of Texas is thereafter limited to the business therein specified, and it cannot amend the permit so issued so as to change the purpose for which it was originally issued. (Texas CT, ¶ .412.)

Some Important Matters for January and February

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Application for Permit to do Business due on or before February 1.—Domestic and Foreign Corporations.

Report of Resident Stockholders and Bondholders due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

COLORADO—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30 of any previous year).—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January. —Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

DOMINION OF CANADA—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

INDIANA—Gross Income Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

Annual Report and License Fee of foreign finance companies due February 1.—Foreign Corporations engaged in the business of financing sales.

Returns of Information at the source due on or before January 31.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Returns and Payment due on or before January 20.—Domestic and Foreign Corporations.

KANSAS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

Capital Stock Statement due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MINNESOTA—Annual Report due between January 1 and April 1.—Foreign Corporations.

Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MISSOURI—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax Report and Tax of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations. Forms 41 C. T. and 42 C. T., Art. 9 of the Tax Law.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

OHIO—Report to Department of Industrial Relations due during January.—Domestic and Foreign Corporations employing three or more persons in Ohio.

Retail Sales Tax Return and Vendors' Excise Tax due on or before January 31.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

OKLAHOMA—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

OREGON—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

PENNSYLVANIA—Report of Unclaimed Dividends, Credits, etc., due in January.—Domestic Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Report due during February.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

UNITED STATES—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

UTAH—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

What Constitutes Doing Business. (Revised to March 15, 1939.) A 184-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation—completely up-to-date as regards the most recent amendments.

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